

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;  
Sudeen G. Kelly, Marc Spitzer,  
Philip D. Moeller, and Jon Wellinghoff.

New England Power Pool and ISO New England, Inc.      Docket No. ER06-613-000

ORDER DENYING EMERGENCY MOTION

(Issued August 30, 2006)

1. On August 15, 2006, several parties (collectively, NEMA Parties)<sup>1</sup> filed an emergency motion to amend the reserve requirements for the 2006-2007 Winter Period in the locational forward reserve auction, and motion for expedited action. In the emergency motion, NEMA Parties specifically request that the Commission direct ISO New England, Inc. (ISO-NE) to revise its proposed locational forward reserve requirements for the NEMA/Boston reserve zone for the 2006-2007 Winter Period to account for a new 345 kV transmission project that NEMA Parties argue is nearing completion and will be in place during the first month of the 2006-2007 Winter Period. In the alternative, the NEMA Parties request that the Commission immediately suspend the locational forward reserve market auction (currently scheduled to begin on August 18, 2006) until it has ruled on the NEMA Parties' motion. In this order, the Commission denies NEMA Parties' motion.

**I. Background**

2. The Commission approved a series of modifications to ISO-NE's ancillary services market in an order dated May 12, 2006.<sup>2</sup> One element of these modifications

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<sup>1</sup> NSTAR Electric & Gas Corporation (NSTAR), City of Boston, TransCanada Power Marketing Ltd., The Energy Consortium, Harvard Dedicated Energy Ltd., PowerOptions, Inc. and Partners HealthCare System, Inc.

<sup>2</sup> *New England Power Pool and ISO New England Inc.*, 115 FERC ¶ 61,175 (2006) (May 12 Order).

included a mechanism for addressing the reliability requirement that a portion of Operating Reserves be located within specific areas of the system. The intent of the locational aspect of the ancillary services market was to encourage the addition of fast-start resources in load pockets through the use of more efficient economic signals.

3. On July 21, 2006, ISO-NE circulated a memorandum to market participants eligible to participate in the locational forward reserve market, which detailed the locational reserve requirements for the period from October 1, 2006 through May 31, 2007 (*i.e.* the 2006-2007 Winter Period). ISO-NE determined that the reserve requirements for NEMA/Boston would be 910 MW for the 2006-2007 Winter Period. On July 28, 2006, NSTAR contacted ISO-NE by letter, requesting clarification with regard to ISO-NE's assumptions underlying the NEMA/Boston local reserve requirements. Specifically, NSTAR asked if ISO-NE's analysis took into consideration a 345 kV transmission project which NSTAR states is "in the final stages of preparation for energization."<sup>3</sup> NEMA Parties state that the 345 kV transmission project includes two new 18-mile underground transmission lines that will improve transmission system reliability and significantly increase the transmission import capability for the NEMA/Boston zone. According to NEMA Parties, "[t]he project is scheduled to be in service no later than September 2006."<sup>4</sup>

4. ISO-NE, in response, clarified that, consistent with its tariff, it assumed no benefit from the 345 kV transmission project into NEMA/Boston for purposes of establishing reserve requirements for the upcoming auction. ISO-NE indicated that the relevant tariff language states:

In the event of a change in the configuration of the transmission system or the addition or retirement of a major generating Resource, the rolling two-year historical analysis will be recalculated on a going forward basis (for use in future auctions). The modified historical data set will be composed of actual data used in the operation of the reconfigured system and historical (pre-reconfiguration) data adjusted for the impact of the system reconfiguration. Pre-reconfiguration data will be revised by substituting values from the historical data set that are no longer valid with corresponding values used in the operation of the reconfigured system.<sup>5</sup>

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<sup>3</sup> NEMA Parties' Emergency Motion at 6.

<sup>4</sup> *Id.* at 5.

<sup>5</sup> ISO-New England Inc. FERC Electric Tariff No. 3, section III.9.2.3.

ISO-NE stated that the market rules “do not provide for transmission facilities that have not been commercially operable for a period of time to be included when determining local reserve requirements.”<sup>6</sup> ISO-NE further stated that absent from the tariff language was any reference to anticipated changes and argued that, in establishing reserve requirements, it had complied with the meaning and intent of the tariff language.

5. NEMA Parties argue here that there is nothing in the above-quoted tariff language that prohibits ISO-NE from taking into account the operation of the new transmission lines to establish local reserve requirements for the upcoming winter period. NEMA Parties further argue that the tariff language appears to allow historical data to be adjusted when the system is reconfigured. NEMA Parties contend that ISO-NE’s interpretation of the tariff language will impose costs on NEMA/Boston ratepayers of \$30 to \$80 million.<sup>7</sup>

6. NEMA Parties state that, in addition to contacting ISO-NE via letter, NSTAR and other parties took other steps to address the issue. Specifically, they state that NSTAR and other parties held informal discussions with ISO-NE staff, and also raised the issue formally within the NEPOOL stakeholder process, at both the Market Committee meeting held on August 8, 2006 and the Participants Committee meeting held on August 11, 2006. NEMA Parties state that “these efforts, however, have not proven fruitful.”<sup>8</sup> Thus, NEMA Parties state that they had little recourse but to file the instant emergency motion.

## **II. Responsive Pleadings**

7. Notice shortening the period to answer NEMA Parties’ emergency motion was issued on August 18, 2006, establishing an August 22, 2006 date for answers to the motion.

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<sup>6</sup> Letter from Charles R. Ide to Michael Swider, Attachment C to NEMA Parties’ Emergency Motion.

<sup>7</sup> NSTAR’s estimate assumes 350 MW to 910 MW will clear in the locational forward reserve market at \$14 /kW-month for the 2006-2007 Winter Period, net of Forward Capacity Market Transition Period revenues of \$3.05/kW-month (from December 2006 - May 2007).

<sup>8</sup> NEMA Parties’ Emergency Motion at 5.

**A. Interventions**

8. Motions to intervene out-of-time were filed by the Associated Industries of Massachusetts (AIM), Consolidated Edison Energy, Inc. (ConEd), FPL Energy, LLC, Massachusetts Attorney General (Mass AG), Medical, Academic and Scientific Community Organization, Inc. (MASCO), NEPOOL Industrial Customer Coalition, Richard Blumenthal, Attorney General for the State of Connecticut (CTAG), TransCanada Power Marketing Ltd. (TransCanada), and United Illuminating Company (UI).

**B. Responses Supporting the Emergency Motion**

9. AIM, CTAG, Connecticut Department of Public Utility Control (CT DPUC), MASCO, Mass AG, the Massachusetts Department of Telecommunications and Energy (Mass DTE), Massachusetts Municipal Wholesale Electric Company (MMWEC), National Grid USA (National Grid),<sup>9</sup> TransCanada and UI all filed responses supporting NEMA Parties' emergency motion. NEMA Parties also filed an answer to the response filed by ISO-NE on August 17, 2006 (noted below).

10. MMWEC and National Grid argue that ISO-NE interprets the applicable tariff language too narrowly. MMWEC contends that the tariff language does not necessarily require that the values used in the operation of the reconfigured system be values derived from historic operation of the reconfigured system. National Grid states that the language requires an adjustment to the local reserve requirements when there is a change in the configuration of the transmission system. National Grid further states that nothing in the language requires that the impact of the system reconfiguration be based on actual data. National Grid states that where ISO-NE does not have actual data, it has the authority to make "adjustments based on historical data adjusted for the impact of the system reconfiguration." National Grid argues that the Commission should clarify that the language in section III.9.2.3 provides ISO-NE with the authority to consider the best information available regarding system reconfiguration that is reasonably anticipated to

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<sup>9</sup> National Grid also filed an alternative complaint requesting fast track processing. Under long-standing precedent, the Commission does not permit complaints to be filed within other pleadings, and requires that they be filed separately. This requirement ensures the orderly processing of pleadings filed with us. *See, e.g., Louisiana Power & Light Company*, 50 FERC ¶ 61,040 at 61,062-63 (1990); *Entergy Services, Inc.*, 52 FERC ¶ 61,317 at 62,270 (1990); *Yankee Atomic Electric Company*, 60 FERC ¶ 61,316 at 62,096-97 (1992). National Grid may avail itself of the Commission's complaint procedures in a separate filing.

go into effect prior to the applicable procurement period. MMWEC asserts that ISO-NE should evaluate the status of construction, the likelihood of timely completion, and the actions that could be taken to expedite the process.

11. MMWEC and National Grid argue that adopting ISO-NE's approach will impose excessive and unreasonable costs on New England customers. MMWEC and National Grid assert that this approach is also inconsistent with the objectives of the locational forward reserve market. Mass DTE contends that there is no reason why ISO-NE cannot recalculate the reserve requirement as requested by NSTAR.

### **C. Responses Opposing the Emergency Motion**

12. ConEd, Exelon Corporation, ISO-NE, ISO-NE Generators,<sup>10</sup> and the New England Power Pool Participants Committee (NEPOOL) all filed comments opposing the emergency motion. ISO-NE also filed an answer to National Grid's response.

13. ISO-NE argues that NEMA Parties' motion should be denied for several reasons. Among those, ISO-NE asserts that the tariff language requires that local reserve requirements be established using historical data, not projected estimations based upon a forward looking approach. ISO-NE further asserts that NEMA Parties' suggested forward-looking approach raises a number of questions as to how to apply subjective judgments regarding the facilities in question when determining local reserve requirements. Moreover, ISO-NE contends that NEMA Parties' cost estimates are unsupported and inaccurate, noting that they selectively assume inclusion of the new 345 kV line without assuming other potential system changes that might result, such as the retirement of a 350 MW generating station in the area. ISO-NE also states that it cannot change the auction requirements as NEMA Parties' request, run the auction, and implement the outcome by October 1. ISO-NE estimates that granting the motion would cause at least a three month delay, which it argues would leave New England with no market mechanism for acquiring and compensating needed reserves during that period.

14. NEPOOL opposes the emergency motion to the extent it seeks to have the Commission either rewrite or delay implementation of the filed rate that was considered and approved by NEPOOL in its stakeholder process. ISO-NE and NEPOOL assert that, during the stakeholder process, the NEPOOL Markets Committee specifically discussed and rejected the relief now being sought on an emergency basis. NEPOOL further asserts

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<sup>10</sup> ISO-NE Generators are: Mirant Energy Trading, LLC, Mirant Canal, LLC, Mirant Kendall, LLC, Boston Generating LLC, Dominion Energy Marketing, LLC, Dominion Energy New England, Inc., ConEd, FPL Energy, LLC and NRG Companies.

that that action was never challenged and never raised as an issue when the Commission considered the applicable market rules. NEPOOL also notes that, while NEMA Parties indicate that the 345 kV Project will be in service for the 2006-2007 Winter Period, there is no assurance that the project will, in fact, be in service when commitments must be made under the filed rate.

### **III. Discussion**

#### **A. Procedural Matters**

15. When late intervention is sought after the issuance of a dispositive order, the prejudice to other parties and burden upon the Commission of granting the late intervention may be substantial. Thus, movants bear a higher burden to demonstrate good cause for granting such late intervention.<sup>11</sup> Those seeking late intervention in this proceeding (as noted above) have not met this higher burden of justifying their late intervention. Accordingly, the Commission denies their motions to intervene out-of-time. In any event, the matters raised by these entities are raised in the other pleadings submitted by entities who are already parties to this case.

16. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2006), prohibits an answer to an answer unless otherwise ordered by the decisional authority. We are not persuaded to accept the answers to answers filed by ISO-NE and NEMA Parties and will, therefore, reject them.

#### **B. Commission Determination**

17. The Commission will deny NEMA Parties' emergency motion for a number of reasons.

18. First, we find that the tariff language accepted in the Commission's May 12 Order, specifically section III.9.2.3 of Market Rule 1, does not provide for the incorporation of "nearly-completed" transmission projects into the auctions. While NEMA Parties assert that the project is scheduled to be in service no later than September 2006, the tariff language states that in the event of a change in the configuration of the transmission system, the rolling two-year historical analysis used to determine reserve requirements will be recalculated on a going-forward basis for use in future auctions. This language makes no mention of "anticipated" or "expected" changes. Additionally, the tariff states that the modified historical analysis created to account for a change in the transmission

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<sup>11</sup>See, e.g., *Midwest Independent Transmission System Operator, Inc.*, 102 FERC ¶ 61,250 at P 7 (2003).

system “will be composed of *actual data used in the operation of the reconfigured system* and historical (pre-reconfiguration) data adjusted for the impact of the system reconfiguration” (emphasis added). Thus, the tariff does not authorize or require ISO-NE to incorporate transmission lines that have yet to be completed into the locational forward reserve auction, and, in fact, contemplates that system configuration changes such as the installation and energizing of a new transmission line will be incorporated *after* those changes are completed and in service.<sup>12</sup>

19. Furthermore, in testimony filed with the tariff language approved by the May 12 Order, Marc Montalvo, Manager of Market Development at ISO-NE, indicated that the methodology would rely on historical data. None of the NEMA Parties or those who filed supporting comments in the instant proceeding protested Mr. Montalvo’s testimony as inconsistent with the tariff language. In fact, National Grid, in its answer, “recognizes that, in testimony submitted with the ISO’s February 6, 2006 ASM Phase II filing, ISO-NE’s Manager of Market Development suggested that ISO-NE would look to actual operating data in adjusting locational reserve requirements to reflect a change in the configuration of the transmission system.”<sup>13</sup>

20. Second, while we acknowledge that NSTAR has taken significant strides to construct new transmission facilities that will help alleviate the NEMA/Boston load pocket, NSTAR states only that the project is scheduled to be in service “no later than September 2006.”<sup>14</sup> We also note that neither NEMA Parties nor those filing in support have provided a schedule or details for the remaining work necessary to complete the new transmission project. Significant consequences could result from modeling a transmission facility that ultimately does not come into service prior to the reserve period, including potential reliability problems, or significant added costs to replace needed

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<sup>12</sup> See ISO-New England Inc. FERC Electric Tariff No. 3, section III.9.2.3.

<sup>13</sup> Response of National Grid at 10.

<sup>14</sup> We note that the expected in-service date of the line was initially June 2006. See Presentation of Steve Whitley, ISO-NE Senior Vice President and COO at May 5, 2006 NEPOOL Committee Meeting, *available at* [http://www.iso-ne.com/committees/comm\\_wkgrps/prtcpts\\_comm/prtcpts/mtrls/2006/may52006/index.html](http://www.iso-ne.com/committees/comm_wkgrps/prtcpts_comm/prtcpts/mtrls/2006/may52006/index.html).

reserves.<sup>15</sup> Moreover, the Commission is concerned that directing ISO-NE to incorporate not-yet-completed projects into the auction process would raise significant practical questions as to the determination of a date before which an as-yet incomplete project would be incorporated and after which an as-yet incomplete project could not be incorporated. And, if such a date could be determined, it would require a change to the ISO-NE tariff, and thus should be discussed and approved by market participants and filed for Commission action in accordance with NEPOOL procedures before it is implemented, with due consideration of the concern identified above.

21. Third, the Commission approved tariff language applicable to the locational forward reserve market in the May 12 Order. In the proceeding that approved the tariff language, none of the NEMA Parties' raised the issue of incorporating "nearly-completed" transmission projects into the auctions. Nor did these parties raise the issue on rehearing. NEMA Parties had ample opportunity to timely present this issue to the Commission prior to their August 15, 2006 emergency motion, but failed to do so.<sup>16</sup> Their motion, in this regard, amounts to an untimely and thus impermissible request for rehearing.<sup>17</sup>

22. Fourth, NEMA Parties indicate that they have formally presented this issue to New England market participants, but these efforts have not been "fruitful." It thus appears that the majority of New England market participants do not support NEMA Parties' request to delay the auction. Indeed, several parties, including ISO-NE and NEPOOL, contend that the issue of whether to incorporate expected system upgrades into reserves determinations was specifically debated and rejected during the stakeholder process. At an October 11, 2005 meeting of the Markets Committee, members of the Markets Committee rejected proposed tariff language that would have allowed ISO-NE

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<sup>15</sup> See, e.g., Answer of ISO-NE at 22 (noting that if the "look-forward approach" urged by NEMA Parties' had been employed for the current Summer reserve period, and the line did not come into service, the region would have lacked needed reserves at a time when new peak load records were set.)

<sup>16</sup> Moreover, the Commission notes that NEMA Parties have been aware of ISO-NE's determination at least since July 21, 2006 (if not earlier), yet waited until three days before the beginning of the auction to submit this emergency motion. It would be unreasonable to delay the locational forward reserve auction at the request of a few parties at such a late date.

<sup>17</sup> 16 U.S.C. § 8251 (2000).



to recalculate the reserve requirement based on a forward-looking approach. That proposal received only 37.43% of the votes in favor, well short of the 60% required for approval. None of the parties seeking or supporting the requested relief have presented any evidence to the contrary. Moreover, NEPOOL states that certain parties seeking relief here (including NSTAR, a member of NEMA Parties) ultimately supported the market rules, which included the language currently in section III.9.2.3.

23. Finally, we note that this issue should impact the NEMA/Boston region for only a limited period of time. Under the language of section III.9.2.3 of the ISO-NE tariff, after the new 345 kV transmission line comes into service and ISO-NE obtains actual data from operating the transmission system as reconfigured by the new line, it would be incorporated into ISO-NE's model for purposes of determining reserve requirements in future periods.

The Commission orders:

NEMA Parties' emergency motion is hereby denied, as discussed in the body of this order.

By the Commission.

( S E A L )

Magalie R. Salas,  
Secretary.